

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *JE* D.C.

05 SEP 12 PM 4:48

MONICA JOHNSON, Surviving Spouse,
on her own behalf, and on behalf of XAVIER
J. JOHNSON, JR., a minor, as mother,
next friend and natural guardian, as next kin
of XAVIER JOHNSON, deceased;

Plaintiffs

vs.

CASE NO. 04-2374-Ma/P

CITY OF MEMPHIS, KENNETH ADAMS,
individually and in his official capacity
as a police officer of the City of Memphis, and
MICHEAL G. DERRICK as Administrator ad
Litem of Melvin Rice, deceased, as said
decedent acted in his individual capacity and
as police officer of the City of Memphis;

Defendants

THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W/D OF TN, MEMPHIS

CONSENT ORDER GRANTING MOTION FOR PARTIAL DISMISSAL OF PLAINTIFFS'
SECOND AMENDED COMPLAINT BY DEFENDANTS, OFFICERS KENNETH ADAMS
AND MELVIN RICE, DECEDENT

The Plaintiffs filed their original Complaint on May 18, 2004, alleging that the Officers violated 42 U.S.C. §1983 by depriving Decedent, Mr. Xavier J. Johnson, of his rights under the Fourth, Fifth, Fourteenth and Fifteenth Amendments to the Constitution. Plaintiffs allege that these violations occurred when the Officers responded to a "911" call at Decedent's address, and that the Officers shot Decedent during this incident, resulting in his death. The Officers filed a Motion for Partial Dismissal on August 31, 2004. In an Order entered December 28, 2004, the Court granted the Officers' Motion, dismissing Plaintiffs' claims under 42 U.S.C. §1983 to the extent they alleged

violations of the Fifth, Fourteenth and Fifteenth Amendments. Plaintiffs filed their Second Amended Complaint on June 29, 2005, in which they raised §1983 claims under the Fifth and Fourteenth Amendments to the Constitution. The Officers filed another Motion for Partial Dismissal of Plaintiffs' Second Amended Complaint, seeking to dismiss the Plaintiffs' §1983 claims under the Fifth and Fourteenth Amendments.

By consent of the parties, for good cause shown, and for the reasons set forth in the Court's December 28, 2004 Order Granting Motion for Partial Dismissal by Defendants Officers Kenneth Adams and Melvin Rice, the Plaintiff's §1983 claims against Defendants Adams and Rice are DISMISSED to the extent they allege violations of the Fifth and Fourteenth Amendments.

So ordered this 9th day of September 2005.



SAMUEL H. MAYS, JR.
UNITED STATES DISTRICT JUDGE

Approved for entry:



WALTER L. BAILEY, JR., No. 4868
JAVIER M. BAILEY, No. 14186
Attorneys for Plaintiffs

WALTER BAILEY LAW FIRM, LLP
100 North Main, Suite 3002
Memphis, Tennessee 38103
Telephone: (901) 575-8702
Facsimile: (901) 575-8705



HENRY L. KLEIN, No. 8856
Attorney for Defendant, City of Memphis

APPERSON, CRUMP & MAXWELL, PLLC
6000 Poplar Avenue, Suite 400
Memphis, Tennessee 38119-3972
Telephone: (901) 756-6300
Facsimile: (901) 756-1296



TIMOTHY TAYLOR, No. 15682
Attorney for Defendant Officers

GODWIN, MORRIS,
LAURENZI & BLOOMFIELD, P.C.
P.O. Box 3290
50 North Front Street, Suite 800
Memphis, Tennessee 38173-0290
Telephone: (901) 528-1702
Facsimile: (901) 528-0246



Notice of Distribution

This notice confirms a copy of the document docketed as number 46 in case 2:04-CV-02374 was distributed by fax, mail, or direct printing on September 14, 2005 to the parties listed.

Javier M. Bailey
WALTER BAILEY & ASSOCIATES
100 North Main St.
Ste. 3002
Memphis, TN 38103

Timothy P. Taylor
GODWIN MORRIS LAURENZI & BLOOMFIELD, P.C.
50 N. Front St.
Ste. 800
Memphis, TN 38103

Henry L. Klein
APPERSON CRUMP & MAXWELL, PLC
6000 Poplar Ave.
Ste. 400
Memphis, TN 38119--397

Walter L. Bailey
WALTER BAILEY & ASSOCIATES
100 North Main St.
Ste. 3002
Memphis, TN 38103

Honorable Samuel Mays
US DISTRICT COURT